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MAY 09 2006

OFFICE OF PETITIONS

In re Application of :  
Philip E. Eggers, et al. :  
Application No. 09/314,247 : ON PETITION  
Filed: May 18, 1999 :  
Attorney Docket No.: A-2-6 :  
:

This is a decision on the petition, filed May 4, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

A review of the record discloses that the issue fee was paid on November 28, 2003. However, on May 7, 2004, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated May 3, 2004, applicants submitted an Request for Continued Examination (RCE) under 37 CFR 1.114. The RCE filed May 7, 2004 is an improper filing under 37 CFR 1.114. It is noted that no filing fee was charged for the RCE filed May 7, 2004.

The present petition requests that the application be withdrawn from issue for consideration of the RCE filed May 3, 2005, sic 2004.

The petition is **GRANTED**.

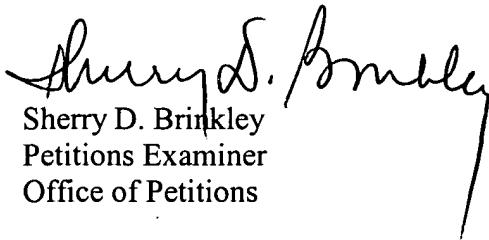
In view of this decision, the RCE filed May 7, 2004 will be processed in accordance with 37 CFR 1.114. The requisite petition and RCE filing fees will be charged to counsel's deposit account, as authorized in the petition.

***Petitioner is advised that the issue fee paid on November 28, 2003, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.<sup>1</sup>***

<sup>1</sup>The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3739 for further processing of the request for continued examination under 37 CFR 1.114 filed May 7, 2004.

  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions